Galex Wolf, LLC
ATTORNEYS AT LAW
1520 U.S. Highway 130, Suite 101
North Brunswick, NJ 08902
(732) 257-0550; FAX (732) 257-5654
Attorneys for Plaintiff, Michael Boswell

MICHAEL BOSWELL, an Incapacitated Person by his Guardian Ad Litem, ETHEL BOSWELL, and ETHEL BOSWELL, Individually,

Plaintiffs,

vs.

STEVE EOON, KIRSTEN BYRNES, CHRISTINA EICKMAN, PTL. JAMES FEISTER, NEW BRUNSWICK POLICE DEPARTMENT, CITY OF NEW BRUNSWICK, and JOHN DOES (#1 thru #5),

Defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION No: 3:08-cv-05098-GEB-LHG

SECOND AMENDED COMPLAINT AND JURY DEMAND

Document Filed Electronically

The plaintiff, Michael Boswell, residing at 9412 Town Court North, Lawrenceville, New Jersey, complaining of the defendants, says:

FIRST COUNT
(State Law Negligence Claim)

1. On or about the 4th day of September 2005 at approximately 2:16 A.M., the plaintiff, Michael Boswell, was a pedestrian crossing Route 18 near its intersection with Commercial Avenue in New Brunswick, New Jersey.

2. At the time and place aforesaid, the defendant, Steve Eoon, was the owner and operator of a motor vehicle traveling southbound on Route 18 near its intersection with Commercial Avenue in New Brunswick, New Jersey.

3. At the time and place aforesaid, the defendant, Kirsten Byrnes, was the operator

of a motor vehicle, owned by the defendant, Christina Eickman, traveling southbound on Route 18 near its intersection with Commercial Avenue in New Brunswick, New Jersey.

4. At the time and place aforesaid, the defendant, Kirsten Byrnes, was an agent, servant or employee of the defendant, Christina Eickman.

5. At all times mentioned herein the defendants, John Does, whose true identities are unknown, were owners and/or operators of vehicles which were caused to collide with the plaintiff, Michael Boswell.

6. At all times mentioned herein the defendants, Steve Eoon and Kirsten Byrnes operated their vehicles in a careless and negligent manner causing it to strike the plaintiff, Michael Boswell.

7. As a direct and proximate result of the defendants' negligence, the plaintiff was caused to sustain severe personal injuries; he has and will be caused to expend large sums of money for medical care and treatment; he has and will be caused to lose time from his employment; he was caused to sustain permanent injury.

WHEREFORE, the plaintiff demands judgment against the defendants for damages, interest and cost of suit.

SECOND COUNT
(State Law Negligence Claim)

1. The plaintiff repeats the allegations contained in the First Count as if more fully set forth herein at length.

2. At all times mentioned herein the defendant, Patrol Officer James Feister, was a police officer employed by the City of New Brunswick Police Department.

3. At the time and place aforesaid and prior to any injuries sustained by the plaintiff, the defendant, Patrol Officer James Feister, did meet with and speak to the plaintiff while he was

a pedestrian upon premises known as Boyd Park in New Brunswick, New Jersey.

4. At the time and place aforesaid, the defendant, Patrol Officer James Feister, approached the plaintiff and knew or should have known that the plaintiff was drinking alcohol and was in an intoxicated state.

5. At the time and place aforesaid, the defendant, Patrol Officer James Feister, knew or should have known that the plaintiff was a homeless individual.

6. At the time and place aforesaid, the defendant, Patrol Officer James Feister, was careless and negligent in the manner in which he directed the plaintiff to immediately leave the park causing the plaintiff to attempt to cross Route 18 at which time he was struck and seriously injured by the defendants named in the First Count.

7. At the time and place aforesaid, the defendant, Patrol Officer James Feister had a duty to immediately render assistance to the plaintiff by removing him in a safe manner from the park and bringing him to a location which would be safe for any homeless person who was in an apparent drunken condition and his failure to do so was a proximate cause in the injuries which ultimately resulted when he was ordered to leave the park and cross the highway.

8. At all times mentioned herein it was foreseeable that by ordering the plaintiff to leave the park in his condition, he would have to cross Route 18 which is a heavily traveled highway and risk the chance of being struck by a motor vehicle.

9. At all times mentioned herein the defendant, Patrol Officer James Feister, was negligent in failing to provide medical assistance to the plaintiff prior to his being struck by the co-defendants.

10. The defendant, Patrol Officer James Feister, was careless and negligent in failing to provide social services assistance by removing a homeless person from the park with alcoholic

beverages in his possession at 2:16 A.M. and ordering him to leave the park knowing that he would have to cross a busy highway.

11. At all times mentioned herein the defendant, Patrol Officer James Feister, was an agent, servant or employee of the defendant, City of New Brunswick Police Department and the City of New Brunswick.

12. At all times mentioned herein the defendant Patrol Officer James Feister's negligence was a proximate cause of the collision which took place between the co-defendants and the plaintiff.

13. At all times mentioned herein the defendants, City of New Brunswick and the New Brunswick Police Department, were careless and negligent in their lack of supervision and failure to properly train their employee to respond to a visibly intoxicated homeless person.

14. As a direct and proximate result of the defendants' negligence, the plaintiff was caused to sustain severe personal injuries; he has and will be caused to expend large sums of money for medical care and treatment; he has and will be caused to lose time from his employment; he was caused to sustain permanent injury

WHEREFORE the plaintiff demands judgment against the defendants for damages, interest and cost of suit.

THIRD COUNT
(Civil Rights Claim Under 42 U.S.C. § 1983)

1. The plaintiff repeats the allegations contained in the First and Second Counts as if more fully set forth herein at length.

2. Plaintiff has a right, protected by the Fourteenth Amendments to the United States Constitutions, to substantive due process, including a liberty interest in personal security.

3. The actions of the defendant, Patrol Officer James Feister, created a danger to the

plaintiff where, exercising his authority as a police officer over plaintiff, he created an increased risk of foreseeable and direct harm to the plaintiff in willful disregard of the plaintiff's safety by ordering the plaintiff, whom he knew or should have known was in an intoxicated state, to leave the park at 2:16 A.M. knowing that he would have to cross a busy highway.

4. The actions of the defendant, Patrol Officer James Feister, were taken under color of state law.

5. The actions of the defendants, Patrol Officer James Feister, were willful, deliberate and malicious.

6. The actions of the defendant, Patrol Officer James Feister, deprived plaintiff of his right to a liberty interest in personal security as well as his rights under the substantive due process component of the Fourteenth Amendment to the United States Constitution.

7. As a proximate result of defendant Patrol Officer James Feister's conduct, plaintiff was caused to sustain severe personal injuries; he has and will be caused to expend large sums of money for medical care and treatment; he has and will be caused to lose time from his employment; he was caused to sustain permanent injury.

WHEREFORE the plaintiff demands judgment against the defendants for damages, interest and cost of suit.

FOURTH COUNT
(Civil Rights Claim Under 42 U.S.C. § 1983)

1. The plaintiff repeats the allegations contained in the First, Second and Third Counts as if more fully set forth herein at length.

2. The actions of defendants, City of New Brunswick and New Brunswick Police Department, constituted a policy, practice, procedure or custom, in that they were undertaken in furtherance of a decision to tolerate the improper and unconstitutional conduct of defendants'

officers and employees.

3. The actions of defendants, City of New Brunswick and New Brunswick Police Department, were taken under color of state law and embodied a policy, practice, custom or procedure of the City of New Brunswick that violated plaintiff's civil rights.

4. The actions of the defendant New Brunswick Police Department violated plaintiff's civil rights when it failed to train and/or supervise its officers and employees regarding the proper care of intoxicated persons, thereby exhibiting an arbitrary and abusive behavioral manner, as well as a deliberate or reckless indifference or callous disregard so as to shock the conscience.

5. The actions of the defendant New Brunswick Police Department violated plaintiff's civil rights when it failed to train and/or supervise its officers and employees regarding the proper care of homeless persons, thereby exhibiting an arbitrary and abusive behavioral manner, as well as a deliberate or reckless indifference or callous disregard so as to shock the conscience.

6. As a proximate result of defendants' actions, plaintiff was deprived of his rights under the United State Constitution, as set forth above, and was caused to sustain severe personal injuries; he has and will be caused to expend large sums of money for medical care and treatment; he has and will be caused to lose time from his employment; he was caused to sustain permanent injury.

WHEREFORE the plaintiff demands judgment against the defendants for damages, interest and cost of suit.

FIFTH COUNT
(New Jersey Civil Rights Claim Under N.J.S.A. 10:6-2)

1. The plaintiff repeats the allegations contained in the First, Second, Third, and

Fourth Counts as if more fully set forth herein at large.

2. Plaintiff has a right, under the Fourteenth Amendment to the United States Constitution, to substantive due process, including a liberty interest in personal security, and consequently the same right exists under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

3. Plaintiff is an individual who was deprived of his substantive due process rights secured under the United States Constitution by defendant, Patrol Officer James Feister, an employee of the defendants City of New Brunswick and City of New Brunswick Police Department, acting under color of state law and, as such, he is entitled to bring a civil action under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

4. The actions of defendants, Patrol Officer James Feister and his employers, the defendants, City of New Brunswick and City of New Brunswick Police Department, put the plaintiff in an exceedingly dangerous predicament, forcing plaintiff, while in a highly intoxicated condition, to leave the park, despite the fact that a busy highway was the sole means of egress.

5. The actions of defendants, Patrol Officer James Feister and his employers, defendants City of New Brunswick and City of New Brunswick Police Department, increased the risk of foreseeable and direct harm to the plaintiff in willful disregard of his safety, given that defendants knew or should have known that plaintiff was an intoxicated state and would be crossing a heavily traveled highway, which would likely, and in fact did, cause severe injury to plaintiff.

6. The actions of the defendants, Patrol Officer James Feister and his employers, the defendants, City of New Brunswick and City of New Brunswick Police Department, were taken under color of state law.

7. The actions of the defendants, Patrol Officer James Feister and his employers,

defendants City of New Brunswick and City of New Brunswick Police Department, were willful, deliberate, and malicious, in total disregard for plaintiff's safety.

8. The actions of the defendants, Patrol Officer James Feister and his employers, the City of New Brunswick and the City of New Brunswick Police Department, deprived plaintiff of his right to a liberty interest in personal security as well as his rights under the substantive due process component of the Fourteenth Amendment to the United States Constitution and, consequently, these defendants violated the New Jersey Civil Rights Act, N.J.S.A. 10:6-2.

9. As a direct and proximate result of defendant Patrol Officer James Feister's conduct, acting as an agent of his employers, the defendants, City of New Brunswick and the New Brunswick Police Department, plaintiff was denied his rights under both the United States Constitution and in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, as set forth above, and was caused to sustain severe personal injuries; he has and will be caused to expend large sums of money for medical care and treatment; he has and will be caused to lose time from his employment; he was caused to sustain permanent injury.

WHEREFORE the plaintiff demands judgment against the defendants for damages, interest, and cost of suit.

SIXTH COUNT

1. The plaintiff, Ethel Boswell, repeats all of the allegations of the First, Second, Third, Fourth and Fifth Counts of this Complaint as if more fully set forth herein..

2. At all times mentioned herein, the plaintiff, Ethel Boswell, was the mother of the Michael Boswell and is now the court-appointed Guardian Ad Litem of Michael Boswell.

3. As a direct and proximate result of the defendants' negligence, the plaintiff, Ethel Boswell, was caused to be deprived of the society, services and consortium of her son Michael

Boswell and will in the future continue to be so deprived and as the court-appointed Guardian Ad Litem is responsible for the administration and payment of the medical bills incurred and the nursing bills incurred for the care and treatment of her son, Michael Boswell, and by this Complaint makes a demand for all past and future medical and nursing bills incurred and to be incurred for the care and treatment of her son, Michael Boswell.

WHEREFORE, the plaintiff, Ethel Boswell, demands judgment against the defendants for damages, interest and cost of suit.

JURY DEMAND

The plaintiffs demand a trial by jury as to all issues.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the Rules, Richard Galex, Esq. is hereby designated as trial counsel.

DEMAND FOR DISCOVERY OF INSURANCE COVERAGE

Pursuant to New Jersey Court Rule 4:10-2(b), demand is hereby made that Defendants disclose to Plaintiffs' attorneys whether there are any insurance agreements or policies under which any person or firm carrying on an insurance business may be liable to satisfy part or all of a Judgment which may be entered in this action or indemnify or reimburse for payments made to satisfy the Judgment and provide plaintiffs' attorneys with true copies of such insurance agreements or policies, including but not limited to any and all declaration sheets. This demand shall be deemed to include and cover not only primary coverage but also any and all excess, catastrophe and umbrella policies.

GALEX WOLF, LLC
Attorneys for Plaintiffs,

By: /s/ Richard Galex
RICHARD GALEX, ESQ.

Dated: July 27, 2009

CERTIFICATION PURSUANT TO N.J. R. Ct. 4:5-1

RICHARD GALEX hereby certifies as follows:

1. I am an attorney at law of the State of New Jersey, and an attorney in the law firm of Galex Wolf, LLC attorneys for the plaintiffs, and am familiar with the above captioned matter.

2. To the best of my knowledge, information and belief, there is no other action pending about the subject matter of this Complaint.

3. I do hereby certify that the foregoing statements made by me are true to the best of my knowledge and if knowingly made false, I am subject to punishment.

By: /s/ Richard Galex
RICHARD GALEX, ESQ.

Dated: July 27, 2009